FEDERATION REPORTS

FONG HONG SIUM v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Briggs, J.) October 26, 1950]

[Kota Bharu — Criminal Appeal No. 42 of 1950]

Criminal trial — Interpreter — Not a sworn interpreter — Accused's right to speak in any language — Duty of Court.

There is no exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. He cannot be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required and the Court must be satisfied that the interpreter is competent to do his work efficiently.

CRIMINAL APPEAL.

Briggs, J. : — In this case the appellant, who is a Hainanese, was tried in the Sessions Court. In the absence of a Court interpreter able to speak Hainanese, the chief clerk of the High Court assisted the Sessions Court as interpreter. He is not a sworn interpreter, and was not sworn in as a special interpreter for the purpose of the case. He spoke in Hokkien, in which he is fluent, and he said, on affirmation before me, that the appellant also spoke, and is fluent, in Hokkien. He added that he did not himself speak Hainanese and that he did not know why a Hainanese interpreter was not obtained. He was cross-examined by the appellant, and admitted that the appellant's Hokkien was "poor". In answer to the Court, he also said that he had not told the Court below that the appellant had spoken first in Hainanese and then in Hokkien.

The difficulties of the Subordinate Courts as regards interpretation in the more unusual languages are serious, and I should be reluctant to do anything to increase them. There are, however, certain rules which must be observed. I am not aware of any exception to the general rule that an accused person is entitled to have proceedings interpreted to him in any language which he desires to use. I think it doubtful whether he can be obliged to use even the language which is his native language, if he does not want to. It is the duty of the Court to find an interpreter for the language required, and the Court must be satisfied that the interpreter is competent to do his work efficiently. If the interpreter is an official interpreter of a Court, or a certified interpreter in the employment of any Government in the Federation, and if he is "engaged in the performance of his duties", then by virute of section 4(2) of the Oaths and Affirmations Ordinance, 1949, it is not necessary to swear the interpreter. In any other case, however, it is a statutory requirement that he should be sworn (see section 4(1)(b) of the Ordinance). Even though he is interpreting in a language in which he is not officially qualified, a Court interpreter will be "engaged in the performance of his duties", since it is the duty of such interpreters to do the work of interpretation in all languages in which they are competent to interpret, notwithstanding the lack of an official qualification. It is a general rule of practice that, unless the interpreter is officially qualified in the language, the Court should ascertain that he can understand, and be understood by the accused with sufficient ease to enable the proceedings to be properly conducted. The most convenient method is to allow him to talk for a few moments with the accused and to enquire whether they can so understand one another. When the Court is satisfied of this, it should be incorporated in the record before the evidence is recorded. There are, of course, cases when this would be quite unnecessary, for example, if both the accused and interpreter are Siamese and are speaking Siamese and the interpreter is fluent in English. When, either by reason of the interpreter being officially qualified or in such manner as is described above, it is established that the interpreter is competent to do his work as such, he must then, unless exempted under the provisions of section 4(2) of the Ordinance, be sworn, and an omission to do this is an illegality. As the interpreter in this case was not an official Court interpreter, or a certified interpreter in the employment of Government, the omission to swear him was an incurable defect, and it was on this ground that I was obliged to allow the appeal and set aside the conviction and sentence. If the interpreter had sworn to his ability to understand and be understood by the appellant, and had been duly sworn as Interpreter, the appellant would have found it very difficult to persuade me that he was not adequately interpreted.

Appeal allowed.

SEET AH ANN v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Abbott, J.) November 14, 1950]

[Malacca — Criminal Appeal No. 28 of 1950]

Criminal Procedure Code, s. 187 — Withdrawal of charge — Discharge of accused — Whether discharge should amount to acquittal — When co-accused person can be called as a witness.

In this case the appellant was charged with having abetted the offence of receiving illegal gratification under section 161 of the Penal Code and one Yap Fook Cheong was charged with receiving the said illegal gratification. At the trial, the Deputy Public Prosecutor asked the Court to discharge the appellant in circumstances not